

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

NORTH CENTRAL STATES REGIONAL
COUNCIL OF CARPENTERS,

Plaintiff,

v.

Case No. 08-C-525

FRED J. PIETTE CO. INC.,

Defendant.

ORDER

Plaintiff was something short of a week late in responding to the Defendant's ("Piette") requests for admissions. Plaintiff requested a brief extension from Piette, which Piette denied. Piette has taken the position (as is its right) that under Fed. R. Civ. P. 36(a)(3), the matters are deemed admitted by virtue of Plaintiff's failure to timely respond. Plaintiff has now filed a motion to withdraw its admissions, in effect an *ex post facto* request for an extension of time.

I am satisfied that the motion should be granted. Although Piette claims it would be prejudiced if amendments to Plaintiff's answers are allowed, its assertion is vague and on questionable footing. The Rules are to be applied so as to secure the just resolution of every action, Fed. R. Civ. P. 1, and thus a litigant should not generally bank on the fact that an opponent's barely tardy response will be dispositive of the issue. In fact, Rule 36(b) expresses the overwhelming preference for reaching the merits, and thus when Piette was contacted by Plaintiff only a few days after the responses were due it should have at least considered the strong possibility that judicial

relief would be granted. As such, its reliance on any admissions by default would have been unsound.

Having found little evidence of prejudice and, and finding that allowing withdrawal would “promote the presentation of the merits of the action,” Fed. R. Civ. P. 36(b), the motion is **GRANTED** and the Plaintiff will not be held to its admissions by default.

SO ORDERED this 5th day of February, 2009.

s/ William C. Griesbach
William C. Griesbach
United States District Judge